

Dishno Riparian Fence

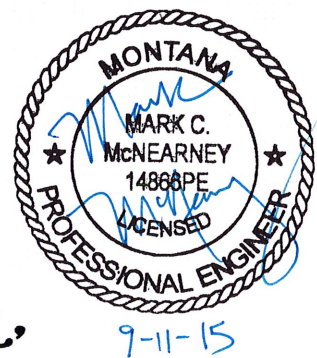
Near Wisdom, MT
FWP # 16-05



*Prepared by:
Paul Valle
September 2015*



**Montana Fish,
Wildlife & Parks**



FRONT PAGE HIGHLIGHTS

Note: This list of items is not an exhaustive or all-inclusive list of the contractor's responsibilities for the project but is provided solely for convenience and reference. ***This page is not binding as part of the Contract Documents, listed in Article 1.1.1.***

ITEM	REFERENCE	GENERAL CONDITIONS
Prevailing Wage Rates	Article 3.4.4 & 16.1	The federal Department of Labor (per the Davis-Bacon Act) and/or the Commissioner of The Montana Department of Labor and Industry (DOLI, 18-2-401 and 18-2-402, MCA) have established the standard prevailing rate of wages to be paid. The Contractor and all subcontractors shall, at minimum, pay the higher rate on a per-trade basis. Regardless of the rate schedule used, certified payroll records are to be submitted to the Owner on a WEEKLY basis.
Warranty	Article 3.5.2	The warranty period shall be defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project.
Schedule	Article 3.10	The Contractor's schedule shall be in the "Critical Path Method" and shall be in a form that is acceptable to the Owner and meet all the conditions of 3.10.
Time Limit on Claims	Article 4.3.1.1	Claims by either party must be initiated within 21 calendar days after occurrence of the event giving rise to such claim.
Weather Delays	Article 4.3.5.2	If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the current critical-path scheduled construction activities.
Waiver of Consequential Damages	Article 4.3.6	The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract.
Mediation & Arbitration	Article 4.5 & 4.6	The parties shall endeavor to resolve their Claims by mediation unless the parties mutually agree otherwise. Claims not resolved by mediation shall be decided by arbitration.
Changes	Article 7.1	Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
Change Order Allowable Costs	Article 7.2.2	As described with a 5% allowance for overhead and a 10% allowance for profit.
Time	Article 8.1.1	Time is of the essence in performance, coordination, and completion of the Work contemplated herein.
Liquidated Damages	Article 8.1.6	The Contractor and his surety shall be liable for and shall pay to the Owner the sums stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete.
Contract Duration/Milestones/Phases	Article 8.1.8	All Work shall reach Substantial Completion by the date(s) listed or within the consecutive calendar days indicated after the start date on the written Notice To Proceed.
Applications for Payment	Article 9.3.2	The Owner has thirty-five (35) calendar days after receipt for approval of the Contractor's Pay Request without being subject to the accrual of interest.
Retainage	Article 9.3.7	Until the Work is complete, the Owner will pay 95% of the amount due the Contractor on account of progress payments. If the Work and its progress are not in accordance with all or any part, piece, or portion of the Contract Documents, the Owner may, at its sole discretion and without claim by the Contractor, increase the amount held as retainage to whatever level deemed necessary to effectuate performance and progress of the Work.
Safety & Protection	Article 10	The Contractor shall be solely responsible for initiating, maintaining and supervising all safety, safety precautions, and safety programs in connection with the performance of the Contract.
Indemnification and Insurance Requirements	Article 11	The Contractor shall indemnify the Owner against the Contractor's negligence. The Contractor shall least carry Workers' Comp, General Liability, Automobile/Equipment, and Property (all-risk) Insurance Coverages as identified. State of Montana shall be listed as an additional insured with copy of ENDORSEMENT provided along with certificates of insurance. No waivers of subrogation shall be accepted.
Performance & Payment Bonds	Article 11.7	The Contract shall furnish a Performance Bond in the amount of 100% of the contract price as security for the faithful performance of his contract. The Contractor shall also furnish a Labor and Material Payment Bond in the amount of 100% of the contract price as security for the payment of all persons performing labor and furnishing materials in connection therewith.
Payroll & Basic Records	Article 13.8	Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Accounting records shall be kept by the Contractor for a period of three years after the date of the Owner's Final Acceptance of the Project.
Federal Requirements	Article 16	Listing of applicable federal requirements for this project.

Table Of Contents

Notice To Bidders	5
Invitation To Bidders	6
Instruction To Bidders	7
Bid Proposal	13
Federal Debarment Form	15
Sample Standard Form of Contract Between Owner and Contractor For Construction Work Under \$25,000 and Owner, Form 110	17
Consent of Surety to Final Payment, Form 103	20
Contractor's Affidavit, Form 106	21
Certificate of Final Acceptance, Form 118	22
Sample Insurance Request Letter	23
Federal Labor Clauses	24
Specifications	Posted Below
Drawings	Posted Below



Montana Fish, Wildlife & Parks

Design & Construction
1522 9th Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 841-4001 | FAX: (406) 841-4004

September 11, 2015

RE: Dishno Riparian Fence Project, FWP # 16-05

To Whom It May Concern:

Montana Fish, Wildlife & Parks is proposing a project south of Wisdom, MT on the Ralph Huntley & Son property. The projects consist of constructing approximately 2,900 feet of 5 wire fence with wildlife friendly crossings at locations determined by the landowner. The completion of the project is on or before December 31, 2015

Your company has been selected for a limited solicitation bid based on the attached Project Documents. There will be a pre-bid meeting held **September 30, 2015 at 1:00 P.M.**. Participants are to meet at the **Crossing Café at Wisdom, MT.**

Sealed bids will be received up to and including **3:00 PM** on **October 8, 2015**, and will be publicly opened and read aloud in the offices of Design and Construction, 1522 9th Avenue, P.O. Box 200701, Helena, MT 59620-0701, for the **Dishno Riparian Fence Project, FWP # 16-05 near Wisdom, MT.**

Thank you. If you have any questions, please feel free to contact Paul Valle, Project Manager at 406-841-4013.

Sincerely,

Sue Rice
Contracts Manager
Design & Construction

Encl.



NOTICE TO BIDDERS

Montana Fish, Wildlife & Parks, Design & Construction receives its mail through the Central Mail Service of the Department of Administration. Therefore, USPS priority mail or other next day services may not reach the offices of Design & Construction if sent the day before. As we have no control over the Central Mail service, contractor's are advised that next day mailing of any type through the Post Office may not reach the D&C offices in time for bid openings and will be returned un-opened to the late bidder.

In addition, other delivery services such as FedEx or UPS may not reach the Design & Construction by the time of bid opening unless morning delivery is specified. The only address for delivery services is:

**1522 9TH Avenue
Helena, MT 59601**

Contractors should send proposals early enough to guarantee that they are delivered to the D&C offices at 1522 9TH Avenue in Helena, not just received by the Central Mail Service, by bid opening time. We suggest early mailing, and if you find it necessary to alter your bid, a fax modification is allowed. Please refer to the Invitation to Bidders section of these specifications for more information.

Thank you for your cooperation in this matter.



INVITATION TO BID

Sealed bids will be received up to and including **3:00 PM** on **October 8, 2015**, and will be publicly opened and read aloud in the offices of the Design and Construction, 1522 9th Avenue, P.O. Box 200701, Helena, MT 59620-0701, for: **Dishno Riparian Fence Project, FWP # 16-05 near Wisdom, MT.**

Bids shall be submitted on the form provided within the Contract Documents. Contract documents may be secured from the Montana Fish Wildlife & Parks Web Site, Design & Construction Upcoming Bid Openings at:

<http://fwp.mt.gov/doingBusiness/designAndConstruction/upcomingBidOpenings.html>

For more information contact the following:

**Montana Fish, Wildlife & Parks
Design & Construction
1522 9th Avenue
P O Box 200701
Helena, MT 59620-0701
PH: 406-841-4000 FX: 406-841-4004**

A refundable deposit of **-0-** is required for each plan set.

A PRE-BID WALK-THROUGH IS SCHEDULED FOR September 30, 2015 AT 1:00 P. M. PARTICIPANTS TO MEET AT CROSSING CAFÉ. ATTENDANCE IS STRONGLY RECOMMENDED.

All bids over \$25,000.00 must be accompanied by a bid security meeting the requirements of the State of Montana in the amount of 10% of the total bid. After award, the successful bidder must furnish an approved Performance Security and a Labor & Material Payment Security each in the amount of 100% of the contract.

No bidder may withdraw his bid for at least thirty (30) calendar days after the scheduled time for receipt of bids except as noted in the Instruction to Bidders.

The Owner reserves the right to reject any or all bids and to waive any and all irregularities or informalities and the right to determine what constitutes any and all irregularities or informalities.

DESIGN AND CONSTRUCTION
DEPARTMENT OF FISH WILDLIFE AND PARKS
STATE OF MONTANA

INSTRUCTIONS TO BIDDERS

1. Viewing of Contract Documents

- 1.1. The Contract Documents may be viewed at the Montana Fish, Wildlife, & Parks Web Site, <http://fwp.mt.gov/doingBusiness/designAndConstruction/upcomingBidOpenings.html>
- 1.2. For Additional Information Contact Montana Fish, Wildlife, & Parks Design & Construction Section:

**Montana Fish, Wildlife, & Parks
Design & Construction
1522 9TH Avenue
P O Box 200701
Helena, MT 59620-0701
PH: 406-841-4000 FX: 406-841-4004**

2. Visits to Site

- 2.1. Prospective bidders are requested to contact the following for inspection of the site:

**Paul Valle
Montana Fish, Wildlife, & Parks
Design & Construction
1522 9TH Avenue
P O Box 200701
Helena, MT 59620-0701
PH: 406-841-4013 FX: 406-841-4004**

- 2.2. Failure to visit site will not relieve the Contractor of the conditions of the contract.

3. Requests for Substitution

- 3.1. Any requests for product substitution must be made to the Architect/Engineer at least ten (10) calendar days prior to the date of the bid opening for consideration by the Architect/Engineer. Any request for substitution made after this time restriction, including those made after award or during project construction may be rejected without consideration by either the Architect/Engineer or the Owner.

4. Bids/Proposals

- 4.1. The bidder shall submit his bid on the Bid Proposal Form furnished with the Contract Documents.
- 4.2. DO NOT send the Contract Documents with the Proposal. The Contract Documents shall be returned to the Architect/Engineer.
- 4.3. If the project is funded by any portion of federal funds, the following may apply: on certain federally-funded projects, a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" form must be submitted with the bid proposal. If the debarment form is not included within the Construction Documents, federal funds (if included) do not require the form or are not included in the project and the debarment form is not required.
- 4.4. Proposals shall be in a sealed envelope and addressed to:

**Department of Fish, Wildlife & Parks
Design & Construction
1522 9TH Avenue
P.O. Box 200701
Helena, MT 59620-0701**

- 4.5. The envelope shall state that it contains a "BID PROPOSAL" and indicate the following information:

Name of Project: Dishno Riparian Fence
Location: near Wisdom, MT
FWP Project Number: 16-05
Name of Bidder: _____
Acknowledge Addendum Number: __, __, __, __,

- 4.6. It is the bidder's responsibility to deliver or ensure delivery of the bid proposal to the office of the Architecture & Engineering Division. Proposals received after the scheduled closing time for bids by either the bidder, a delivery service (e.g. Federal Express, U.S. Postal Service, United Parcel Service, etc.), or the state's own mail delivery system, will be rejected. Proposals entitled for consideration must be time-stamped in the Owner's office prior to the closing time for receipt of bids. The official time clock for receipt of bids and fax modifications is the Owner's time and date stamp clock located on the reception desk in the Owner's office. No other clocks, calendars or timepieces are recognized. All bidders are responsible to ensure all bids and fax modifications are received in the Owner's office prior to the scheduled closing time.
- 4.7. If requested on the Bid Proposal Form, any person making a bid to perform the work shall, as a requirement of a responsible bid, set forth the name of each subcontractor specified in the "List of Subcontractors" which is part of the bid proposal. The bidder shall list only one subcontractor for each such portion of work listed. The bidder whose bid is accepted shall not:
- 4.7.1. Substitute any other subcontractor in place of the subcontractor listed in the original bid, except by specific consent of the Owner. The Owner, at its sole discretion, may grant substitution with consent of the originally listed subcontractor, or in consideration of other factor(s) involved if deemed relevant to the successful performance of the Contract.
- 4.7.2. Permit any such subcontract to be voluntarily assigned, transferred or allow it to be performed by any party other than the subcontractor listed in the original bid without the consent of the Owner.
- 4.8. Bid Proposals entitled to consideration shall be made in accordance with the following instructions:
- 4.8.1. Made upon form provided;
- 4.8.2. All blank spaces properly filled;
- 4.8.3. All numbers stated in both writing and in figures;
- 4.8.4. Shall contain no additions, conditional or alternate bids, erasures or other irregularities;
- 4.8.5. Shall acknowledge receipt of all addenda issued.
- 4.9. Bid Proposals entitled to consideration shall be signed by the proper representative of the firm submitting the proposal as follows:
- 4.9.1. The principal of a single owner firm;
- 4.9.2. A principal of a partnership firm;
- 4.9.3. An officer of an incorporated firm, or an agent whose signature is accompanied by a certified copy of the resolution of the Board of Directors authorizing that agent to sign; or,
- 4.9.4. Other persons signing for a single-owner firm or a partnership shall attach a power-of-attorney evidencing his authority to sign for that firm.
- 4.10. UNIT PRICES: When a Bid Proposal Form contains unit prices, any errors discovered in the extension of those unit prices will be corrected by the Owner using the unit price figures. The adjusted extended amount will then be used to determine the correct total bid. Only after the amounts have been checked and adjusted, if necessary, will the valid low bid be determined.
- 4.11. ESTIMATED QUANTITIES: All estimated quantities stipulated in the Bid Proposal and other Contract Documents are approximate and are to be used only as a basis for estimating the probable cost of the work and for the purpose of comparing proposals submitted for the work. It is understood and agreed that the actual amounts of work done and materials furnished

under unit price items may vary from such estimated quantities. The actual quantities will depend on the conditions encountered at the time the work is performed.

- 4.12. Any bidder may modify his bid by fax communication only. It is the bidder's responsibility to ensure that the modification is received at the bid opening location prior to the scheduled closing time for receipt of bids. The modification shall not reveal the bid price, but shall only provide the ADDITION or SUBTRACTION from the original proposal. The Owner is not responsible for the performance of the facsimile machine, maintaining adequate paper levels, toner levels, the telephone connection, quality of the facsimile, or any other factors affecting receipt of the fax. Unreadable or difficult-to-read facsimiles may be rejected at the sole discretion of the Owner. Changes in the listed subcontractors, if any, shall also be provided. Bid modifications must be verified by hard copy provided to the Owner within two (2) business days after the bid opening. Bid modifications shall be directed to fax phone (406) 841-4004. Date and time as indicated at the top of the facsimile may be used in determining time of arrival of the modification.
- 4.13. The Owner reserves the sole right to reject any or all bids and to waive any irregularities or informalities. The Owner also reserves the sole right to determine what constitutes irregularities or informalities and/or what is material and/or immaterial to the bids received.

5. Bid Security

- 5.1. All proposals \$25,000 or greater shall be accompanied by a bid security in the amount of 10% of the bid price, as evidence of good faith (18-2-302 MCA).
- 5.2. Bid security shall be in the form of lawful moneys of the United States, cashier's check, certified check, bank money order or bank draft, bid bond or bonds payable to the State of Montana (18-2-302 MCA).
- 5.3. If the bidder, to whom a contract is awarded, fails to enter into and execute the proposed contract within fifteen (15) calendar days of award, the bidder shall forfeit the bid security (18-1-204 MCA).
- 5.4. The bid security of unsuccessful bidders will be returned when the contract has been awarded to the successful bidder or when all bids have been rejected (18-1-205 MCA).
- 5.5. Execution of and entering into a contract includes providing all necessary insurance certificates, bonds, signed contract and current copy of the construction contractor registration certificate or registration number.
- 5.6. Note: Per state policy, if cash, check, money order or bank draft are provided as bid security, it will be deposited in the treasury. Unsuccessful bidders will have their security returned upon contract award. The successful bidder's security may be returned upon issuance of notice to proceed.

6. Withdrawal of Bids

- 6.1. Any bidder may withdraw his bid proposal at any time prior to the scheduled closing time for the receipt of bids.
- 6.2. Once the closing time for the receipt of bids is reached, a bid may not be withdrawn for a period of thirty (30) calendar days.
- 6.3. The official time clock for receipt of bids and fax modifications is the Owner's clock and date stamp located on the reception desk in the Owner office. No other clocks, calendars or timepieces are recognized. All bidders are responsible to ensure all bids and fax modifications are received in the Owner's Office prior to the scheduled closing time.

7. Interpretation of Contract Documents

- 7.1. Bidders shall promptly notify the Architect/Engineer of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents or of the site and local

conditions.

- 7.2. Bidders requiring clarification or interpretation of the Contract Documents shall request, in writing, clarification from the Architect/Engineer at least ten (10) calendar days prior to the date set for receipt of bids.
- 7.3. Any interpretations, corrections, or change in the Contract Documents prior to the bid opening will be made by written addendum issued by the Architect/Engineer. The Architect/Engineer will endeavor to notify all plan holders of any addenda issued but it shall be the responsibility of the individual bidders to insure they have received all addenda prior to the submission of their bid.
- 7.4. All written addenda issued by the Architect/Engineer will become part of the Contract Documents and all bidders shall be bound by such addenda whether or not received and/or acknowledged by the bidder. No oral or telephone modifications of the Contract Documents will be considered or allowed.

8. Award of Bids

- 8.1. All bids received by the stated hour will be opened and publicly read aloud.
- 8.2. The Owner reserves the right to reject any and all bids and to waive any informality or irregularity in any bid received. The Owner reserves the right to determine what constitutes material and/or immaterial informalities and/or irregularities.
- 8.3. The low bid shall be determined on the basis of the lowest Base Bid or the lowest combination of Base Bid and Alternate Bid, accepted in consecutive order.
- 8.4. The Owner shall award such contract to the lowest responsible bidder (18-1-102 MCA).
 - 8.4.1. The Owner may make such investigations as it deems necessary to determine whether or not any or all bidders are responsible.
 - 8.4.2. The term "responsible" does not refer to pecuniary ability only, nor the ability to tender sufficient performance and payment bonds.
 - 8.4.3. The term "responsible" includes, but is not limited to:
 - 8.4.3.1. Having adequate financial resources to perform the contract or the ability to obtain them;
 - 8.4.3.2. Being able to comply with the required delivery, duration, and performance schedule;
 - 8.4.3.3. Having a satisfactory record of integrity and business ethics;
 - 8.4.3.4. Having the necessary organization, experience, accounting, and operational controls;
 - 8.4.3.5. Having the necessary production, construction, technical equipment, and facilities; and,
 - 8.4.3.6. Having the technical skill, ability, capacity, integrity, performance, experience, lack of claims and disputes, lack of actions on bonds, lack of mediations, arbitrations and/or lawsuits related to construction work or performance, and such like.
 - 8.4.4. Bidders shall furnish to the Owner all information and data for this purpose as the Owner may request.
 - 8.4.5. The Owner reserves the right to reject any bid if the investigation or evidence of any Bidder fails to satisfy the Owner that such Bidder is properly and adequately qualified to suitably perform and satisfactorily execute the obligations of the Contract and Work defined in the Contract Documents.
- 8.5. The Owner shall award such contract to the lowest responsible bidder without regard to residency except on a reciprocal basis: a resident bidder will be allowed a preference on a contract against the bid of any non-resident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of the State of Montana must be equal to the preference given in the other state or country (18-1-102, MCA). This does not apply when prohibited by federal requirements.

- 8.6. Montana Fish, Wildlife, & Parks may negotiate deductive changes, not to exceed 7% of the total cost of the project, with the lowest responsible bidder when the lowest responsible bids causes the project cost to exceed the appropriation; or with the lowest responsible bidders if multiple contracts will be awarded on the projects when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate his bid but is required to honor his bid for the time specified in the bidding documents. The Owner may terminate negotiations at any time (18-2-105(7) MCA).

9. Contract

- 9.1. The sample Standard Form of Contract between Contractor and Owner, as issued by the Owner, will be used as the contracting instrument and is bound within the Contract Documents.
- 9.2. The form shall be signed by a proper representative of the bidder as defined above in these instructions.
- 9.3. The Contractor shall also complete and return federal form W-9 along with the Contract.

10. Performance, Labor and Material Payment Security

- 10.1. IF THE PROJECT COST IS LESS THAN \$50,000, AT ITS SOLE DISCRETION THE STATE OF MONTANA MAY OR MAY NOT REQUIRE A PERFORMANCE OR LABOR AND MATERIAL PAYMENT SECURITY (18-2-201 MCA).
- 10.2. THE CONTRACTOR SHALL PROVIDE BOTH SECURITIES FOR THIS PROJECT AS SPECIFIED BELOW, UNLESS SPECIFICALLY DIRECTED THAT THIS REQUIREMENT HAS BEEN WAIVED ELSEWHERE IN THESE DOCUMENTS.
- 10.3. The Owner shall require the successful bidder to furnish a Performance Bond in the amount of 100% of the contract price as security for the faithful performance of his contract (18-2-201, MCA). **Required if bid is over \$50,000.**
- 10.4. The Owner shall require the successful bidder to furnish a Labor and Material Payment Bond in the amount of 100% of the contract price as security for the payment of all persons performing labor and furnishing materials in connection therewith (18-2-201 MCA). **Required if bid is over \$50,000.**
- 10.5. The bonds shall be executed on forms furnished by the Owner. No other forms will be acceptable.
- 10.6. The bonds shall be signed in compliance with state statutes (33-17-111 MCA).
- 10.7. Bonds shall be secured from a state-licensed bonding company.
- 10.8. Power of Attorney
- 10.8.1. Attorneys-in-fact who sign contract bonds must file with each bond a certified and effectively dated copy of their power of attorney;
- 10.8.2. One original copy shall be furnished with each set of bonds.
- 10.8.3. Others furnished with a set of bonds may be copies of that original.

11. Notice To Proceed

- 11.1. The successful bidder who is awarded the contract for construction will not be issued a Notice to Proceed until there is a signed Contract, the specified insurance certificates, completed bond forms if applicable, federal form W-9 and a copy of the bidder's current Construction Contractor Registration Certificate in the Owner's possession. All items are required within fifteen (15) calendar days of contract award made by the Owner.

12. Laws and Regulations

- 12.1. The bidders' attention is directed to the fact that all applicable federal and state laws, municipal

ordinances, and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contract throughout and will be deemed to be included in this contract as if bound herein in full.

13. PAYMENTS

- 13.1. NOTICE OF APPROVAL OF PAYMENT REQUEST PROVISION. Per Title 28, Chapter 2, Part 21, this contract allows the Owner to change the number of days to approve a Contractor's payment request. This contract allows the Owner to approve the Contractor's payment request within thirty-five (35) calendar days after it is received by the Owner without being subject to the accrual of interest.

PROPOSAL
FWP Dishno Riparian Fence
FWP# 16-05

Montana Fish, Wildlife & Parks
Design and Construction
PO Box 200701
1522 Ninth avenue
Helena, Montana 59620-0701

The undersigned, having familiarized himself with the conditions of the work and the contract documents as prepared **Paul Valle P.O. Box 200701 Helena Montana 59620-0701 Phone 406 841-4013**, agrees to furnish all labor, materials, equipment, and services necessary to complete all general construction work, as bid herein, for a project entitled

FWP Dishno Riparian Fence

in accordance with the Contract Documents including all Addenda. **Please note all unit prices must be filled in for a valid bid (18-2-303 MCA).** The bidder agrees to perform all the work described below at the price shown as follows:

Base Bid:

Item #	Description	Estimated Quantity	Unit Measure	Unit Price	Amount
1	Five wire fence double strand barbed wire	2,900	foot		
2	Provide and install 12' steel panel gates	3	each		
3	Two post brace panels	6	each		
4	Three post brace panels	3	each		
5	Jack leg brace panels	2	each		
6	Wire Jack leg fence	100	foot		
7	Wildlife crossing	1	Each		
Total:				\$	

BASE Bid: _____
AND _____ /100 DOLLARS (\$)).

And certifies that he is a duly and regularly licensed contractor registered with the Montana Department of Labor and Industry:

FIRM NAME: _____

TELEPHONE# _____

BY: _____

REGISTRATION# _____

BUSINESS

ADDRESS _____

This bidder acknowledges receipt of the following addenda:

ADDENDUM NO. _____ DATED

ADDENDUM NO. _____ DATED

ADDENDUM NO. _____ DATED



Montana Fish, Wildlife & Parks

DESIGN AND CONSTRUCTION

1522 9th Avenue • P.O. Box 200701

Helena, Montana 59620.0701

Phone: 406.841.4000 • Fax: 406.841.4004

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Project Name: Dishno Riparian Fence
Location: near Wisdom, MT
FWP #: 16-05

THIS DEBARMENT FORM MUST BE SIGNED AND SUBMITTED ALONG WITH THE PROPOSAL.

**TO: DEPARTMENT OF FISH, WILDLIFE AND PARKS
DESIGN AND CONSTRUCTION
1522 9th Avenue, P.O. BOX 200701
HELENA, MT 59620-0701**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 43 CFR Part 12, Section 12.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). For further assistance in obtaining a copy of the regulations, contact the U.S. General Services Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS)

- (1) The prospective lower tier participant certifies, by submission of this proposal that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department of agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification.
2. The certifications in this clause are a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the offices to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the offices to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction, "without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.



Montana Fish, Wildlife & Parks

DESIGN & CONSTRUCTION

1522 9th Avenue • P.O. Box 200701

Helena, Montana 59620-0701

Phone: 406.841.4000 • Fax: 406.841.4004

Sample

STANDARD FORM OF CONTRACT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION FOR WORK UNDER \$25,000

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, MCA TITLE 27, CHAPTER 5

This CONTRACT between the CONTRACTOR (as stated herein below) and the STATE OF MONTANA, acting by and through its DIRECTOR, DEPARTMENT OF FISH, WILDLIFE, & PARKS, hereinafter called the OWNER. WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all the Work as follows (use attachments as necessary):

Dishno Riparian Fence Project, FWP # 16-05

Name & Date of Attachments (if any) or scope (note location under 9. for additional description if necessary)

ARTICLE 2. TIME OF COMPLETION. The Work to be performed shall commence on a date set forth by the Department in a written "Notice to Proceed" and shall be completed within **(0)** calendar days. Because actual damages from a breach of this obligation are different and impractical, the parties agree that it is fair and reasonable to assess liquidated damages. Therefore, the parties agree a breach will result in presumed damages of **And No/100's Dollars (\$0.00)** per calendar day past the completion that the work required under this contract runs. The Work to be performed shall commence on the date set forth in this Contract and shall be completed within or by:

ARTICLE 3. THE CONTRACT SUM. The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order, the Contract Sum of:

Total Compensation in Alpha & Numeric Notation (\$0.00)

ARTICLE 4. PROGRESS PAYMENTS. Should this Contract extend beyond sixty (60) calendar days, the Owner shall make payments on account of the Contract as follows: Ninety-five percent (95%) of the portion of the Contract Sum for labor, materials, and equipment incorporated in the Work and of materials suitably stored at the project site or at some other location agreed upon in writing. The Owner shall make payment within thirty-five (35) calendar days after receipt of Form 101, Periodic Estimate for Partial Payment request, subject to review and approval. The Contractor shall, within seven (7) days following receipt of payment from the Owner, make payment to any Subcontractor(s) and/or Supplier(s), less any retainage as provided between the Contractor and Subcontractor(s) and or Supplier(s).

ARTICLE 5. FINAL PAYMENT. Final payment constituting the entire unpaid balance of the Contract Sum shall be paid by the Owner to the Contractor when: 1) the Work has been completed to the Owner's satisfaction; 2) the Contract has been fully performed; and 3) an Affidavit on Behalf of the Contractor form has been submitted. The Contractor warrants all workmanship and materials for a period of one (1) calendar year from the date of final payment.

ARTICLE 6. VENUE. In the event of litigation or arbitration concerning the Contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the laws of Montana.

Do Not Complete, This is a Sample Only

This Contract entered into as of the day and year written:

CONTRACTOR: _____

(Company)

(Address)

(City, State, ZIP)

(Signature)

(Date)

Contractor's Registration Certificate No. _____

Tax ID: _____

Incorporated? _____ No _____ yes

OWNER: STATE OF MONTANA

DEPARTMENT OF FISH WILDLIFE & PARKS

DESIGN AND CONSTRUCTION

1522 9th Avenue, P O Box 200701

Helena MT 59620-0701

For (Director/Administrator/Project Manager)

(Date)

ARTICLE 7. MISCELLANEOUS. See next page Contract

Please refer to FWP Project # 16 -05 - in all correspondence.

ARTICLE 7. MISCELLANEOUS.

1. Taxes/Permits/Fees. The Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees, and comply with all laws, ordinances, rules, regulations, and lawful orders bearing on the performance of the Work.

2. Labor/Materials/Equipment. Unless otherwise specified, the Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction, and services for the proper execution and completion of the Work. Unless otherwise specified, all material and equipment provided shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.

3. Hiring Preference and Montana Products Preference. For state construction projects within an Indian reservation, hiring preference will be given to Indian residents of the reservation who have substantially equal qualifications for any position. This preference will apply unless federal law specifically prohibits residency preference.

4. Insurance. The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the Work by the Contractor, its agents, employees, representatives, assigns, or Subcontractors.

a. Hold Harmless and Indemnification: the Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor, its agents, employees, or any third parties on account of bodily or personal injuries, death, or damage to property arising out of services or Work performed or omissions of work or in any way resulting from the acts, negligent or otherwise, or omissions of the Contractor, its agents, employees, assigns, and/or Subcontractors under this Contract.

b. Contractor's Insurance: **insurance required under all sections herein shall be in effect for the duration of the Contract.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the State of Montana. No Contractor or Subcontractor shall commence Work under this Contract until all required insurance has been obtained. During the term of this Contract, the Contractor shall, not less than thirty (30) days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these Contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited, or restricted without thirty (30) days' written notice by certified mail to the Contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.

c. The Contractor shall carry **Workers' Compensation Insurance.** Such Workers' Compensation Insurance shall protect the Contractor from claims made by its own employees, the employees of any Subcontractor, and also claims made by anyone directly or indirectly employed by the Contractor or Subcontractor. The Contractor shall require each Subcontractor similarly to provide Workers' Compensation Insurance.

d. The Contractor shall carry **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products, and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General Liability Insurance** and **Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the Work under this Contract, or operations incidental thereto, whether such Work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or the Subcontractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain completed operations liability insurance required herein for a period of not less than one (1) year after final payment or anytime the Contractor goes on to the location of the project.

i. The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers, and political subdivisions thereof. Should the Contractor not be able list the State as an additional insured, the Contractor shall purchase a per-occurrence Owner's/Contractor's Protective policy with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as those indicated above for the Contractor's Commercial General Liability Insurance policy.

ii. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading, or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.

iii. The Contractor's insurance coverage shall be PRIMARY insurance as respects the State, its officers, elected and appointed officials, employees, and volunteers. Any insurance or self-insurance maintained by the State, its officers, elected and appointed officials, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

5. Construction Contractor Registration. The Contractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA **before** the Contract is executed by the State of Montana for all projects greater than \$2,500.00, and a copy of the registration certificate must be provided to the Owner.

6. Gross Receipts Tax. In compliance with 15-50-206 MCA, the Contractor will have one percent (1%) of its gross receipts withheld by the Owner from all payments due for Contracts greater than \$5,000.00. Each Subcontractor who performs work greater than \$5,000.00 shall have one percent (1%) of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the department's prescribed forms.

7. Equal Employment Opportunity. All hiring and other employment practices shall be nondiscriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

8. Record Keeping. Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst, or his authorized representative at mutually convenient times. Accounting records shall be kept by the Contractor for a period of three (3) years after completion and acceptance of the project by the Owner.

9. Additional Provisions.

i) The Work. The Work to be done under this Contract consists of: Refer to Article 1 for Description Of The Scope Of Work.

- ii) Lump Sum Project. Compensation for this Contract is a Lump Sum, Fixed Fee amount for all that is necessary to complete the Work. Upon written request by the Contractor, the Owner will make progress payments to the Contractor upon verification of percentage complete. If there are services required beyond the scope of this Contract, such services shall be negotiated with the Owner. Services beyond the scope of this Contract must be authorized by the Owner prior to performance of such services or they shall be at the Contractor's expense.

- iii) Performance, Labor and Material Payment Security. To be checked by Owner: **REQUIRED** **NOT REQUIRED**

If required, the successful bidder shall furnish a Performance Bond and a Labor and Material Payment Bond, each in the amount of 100% of the contract price as security for the faithful performance of his contract (18-2-201, Montana Code Annotated). The bonds shall be executed on forms furnished by the Owner—form 112, Performance Bond; and form 113, Labor and Material Payment Bond—no other forms will be acceptable. The bonds shall be signed in compliance with state statutes (33-17-1111, Montana Code Annotated). The bonds shall be secured from a state licensed bonding company. The successful bidder may, in lieu of a surety bond or bonds, provide securities in an amount equal to the contract price for each bond type required, in accordance with (18-2-201, Montana Code Annotated).

- vii) Notification of On-site Operations. The Contractor shall provide a minimum of 12 hours notice to Owner of all times and dates during which Work will be performed at the site. This may be done by written schedules or verbal communication.

viii) LABOR, WAGES, AND MATERIALS

a. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, permits, licenses, goods, products, equipment, tools, construction equipment and machinery, water, heat, all utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work in accordance with the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

b. The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect/Engineer and in accordance with a Change Order. This opportunity to request substitutions does not negate or waive any requirement for the Contractor to follow a pre-bidding "prior approval" requirement nor obligate the Owner to approve any substitution request.

c. The Contractor shall enforce strict discipline, appropriate behavior, and good order among the Contractor's employees, subcontractors at every tier and level, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

d. Prevailing Wages and Montana Residents. (IF FEDERAL DAVIS-BACON RATES ARE INCLUDED IN THE CONTRACT DOCUMENTS, THIS PARAGRAPH SHALL BE VOID IN ITS ENTIRETY AND THE CONTRACTOR SHALL COMPLY THE FEDERAL REQUIREMENTS. EXCEPTION: IF THE STATE PREVAILING RATES ARE HIGHER THAN THE FEDERAL, THE CONTRACTOR AND ALL SUBCONTRACTORS SHALL ABIDE BY THE HIGHER RATE SCHEDULE. ALL REPORTING, DOCUMENTATION, ETC. SHALL REMAIN AS PER THE FEDERAL REQUIREMENTS.)

- i. The Contractor and all subcontractors at any level or tier of the Work shall give preference to the employment of bona fide Montana residents in the performance of the Work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. (18-2-403, MCA)
- ii. At least 50% of the workers, as defined by the Department of Labor & Industry (DOLI), must be bona fide Montana residents. (18-2-401, 18-2-402, MCA)
- iii. Indian Employment Preference within the Boundaries of an Indian Reservation. All contractors that are awarded a state agency construction contract within the exterior boundaries of an Indian Reservation shall extend a hiring preference to qualified Indians as provided herein:
 1. "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this State. "Indian" means a person who is enrolled or who is a lineal descendent of a person enrolled in an enrollment listing of the Bureau of Indian Affairs or in the enrollment listing of a recognized Indian tribe domiciled in the United States.
 2. Qualified Indians – Employment Criteria: An Indian shall be qualified for employment in a permanent, temporary, or seasonal position if he or she has substantially equal qualifications for any position and resides on the reservation where the construction contract is to be performed.
 3. Non-Applicability: The Indian Employment Preference Policy does not apply to a project partially funded with federal-aid money from the United States Department of Transportation or when residency preference laws are specifically prohibited by federal law. It does not apply to independent contractors and their employees, student interns, elected officials, or appointed positions.
- iv. The Commissioner of the Montana Department of Labor and Industry (DOLI) has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, MCA. The Commissioner of the Montana DOLI has established the resident requirements in accordance with 18-2-409, MCA. The Contractor and all subcontractors at any level or tier of the Work shall direct any and all questions concerning prevailing wage and Montana resident issues for all aspects of the Work to DOLI.
- v. The Contractor and all subcontractors at any tier or level of the Work, and as determined by the Montana DOLI, shall classify all workers in the project in accordance with the State of Montana, Prevailing Wage Rates. In the event the Contractor is unable to classify a worker in accordance with these rates he shall contact DOLI for a determination of the classification and the prevailing wage rate to be paid.
- vi. The Contractor and all subcontractors at any tier or level of the Work shall be responsible for obtaining wage rates for all workers prior to their performing any work on the project. The Contractor is required to pay and insure that its subcontractors at any tier or level and others also pay the prevailing wage determined by the DOLI, insofar as required by Title 18 of the MCA and the pertinent rules and standards of DOLI.
- vii. It is not the responsibility of the Owner to determine who classifies as a subcontractor, sub-subcontractor, material man, supplier, or any other person involved in any aspect of the Work at any tier or level. All such determinations shall be the sole responsibility of the Contractor, subcontractors, sub-subcontractors, material men, suppliers and others involved in the project at any tier or level. The Contractor, subcontractors, sub-subcontractors, material men, suppliers and others involved in the project shall indemnify and hold harmless the Owner from all claims, attorneys' fees, damages and/or awards involving prevailing wage or Montana resident issues. Any changes to wages or penalties for failure to pay the correct wages will be the sole responsibility of the Contractor and/or his subcontractors and no further charges or claims shall be made to the Owner. If the parties mutually agree or an arbitrator or court determines that any change in wages is due and any part is attributable to the Owner, the Owner's sole liability shall be for the amount of wages ordered only and not for other expenses, charges, penalties, overhead, profit or other mark-ups.
- viii. In accordance with 18-2-422(1) MCA, each job classification's standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project is included herein by both reference to DOLI's "Building" or "Heavy/Highway" schedules.
- ix. The Contractor and every employer, including all subcontractors at any tier or level, is required by 18-2-422(2) MCA to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423 MCA, for a period of not less than 3 years after the contractor's, subcontractor's, or employer's completion of work on the project or the Final Acceptance by the Owner, whichever ever is later.
- x. Each contractor is required by 18-2-422(3) MCA to post in a visible and accessible location a statement of all wages and fringe benefits in compliance with 18-2-423.



Montana Fish, Wildlife & Parks

STATE OF MONTANA DESIGN AND CONSTRUCTION

1522 9th Avenue • P.O. Box 200701
Helena, Montana 59620.0701

Phone: 406.841.4000 • Fax: 406.841.4004

CONSENT OF SURETY COMPANY TO FINAL PAYMENT

Project: Dishno Riparian Fence
Location: near Wisdom, MT
FWP#: 16-05

TO: DEPARTMENT OF FISH WILDLIFE AND PARKS
DESIGN AND CONSTRUCTION
1522 9th AVENUE, P.O. BOX 200701
HELENA, MT 59620-0701

Contractor: _____ Contract Date: _____

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the (here insert name and address of Surety Company)

,Surety Company,

on bond of (here insert name and address of Contractor)

,Contractor,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to the Montana Department of Fish, Wildlife, & Parks, Owner, as set forth in the said Surety Company's bond. The Surety agrees to be bound to the warranty period under the same conditions as the Contractor. The warranty is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Substantial Completion or Final Acceptance.

IN WITNESS WHEREOF,
the Surety Company has hereunto set its hand this ____ Day of ____, ____

Surety Company

Signature of Authorized Representative

Title

Attest:
(Seal)



**Montana Fish,
Wildlife & Parks**

DESIGN AND CONSTRUCTION

1522 9th Avenue • P.O. Box 200701
• Helena, Montana 59620.0701
Phone: 406.841.4000 • Fax: 406.841.4004

**CONTRACTOR'S AFFIDAVIT OF COMPLETION,
PAYMENT OF DEBTS AND CLAIMS, AND RELEASE OF LIENS**

Project Name: Dishno Riparian Fence
Location: near Wisdom, MT
FWP #: 16-05

I CERTIFY to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the corresponding contract documents between the STATE OF MONTANA, acting by and through its DIRECTOR, DEPARTMENT OF FISH, WILDLIFE AND PARKS, hereinafter called the Owner, and

hereinafter called the CONTRACTOR, for the above referenced project.

I further certify and declare that all bills for materials, supplies, utilities and for all other things furnished or caused to be furnished by the CONTRACTOR and used in the execution of the contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities and/or demands of State Agencies, subcontractors, materialmen, mechanics, laborers or any others resulting from or arising out of any work done, caused to be done or ordered to be done by the CONTRACTOR under the contract.

In consideration of the prior and final payments made and all payments made for authorized changes, the CONTRACTOR releases and forever discharges the OWNER from any and all obligations, liens, claims, security interests, encumbrances and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the OWNER, arising out of or in any way relating to the contract and authorized changes.

I further certify and agree that the warranty period is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Substantial Completion or Final Acceptance.

This statement is made for the purpose of inducing the OWNER to make FINAL PAYMENT under the terms of the contract, relying on the truth and statements contained herein.

(Seal)

CONTRACTOR

(Signature)

(Title)

Subscribed and sworn to me this ____ Day of ____, ____

(Seal)

NOTARY

Notary Public for the State of Montana
My Commission Expires:



Montana Fish, Wildlife & Parks

DESIGN & CONSTRUCTION
1522 9th Avenue • P.O. Box 200701
Helena, Montana 59620.0701
Phone: 406.841.4000 • Fax: 406.841.4004

CERTIFICATE OF FINAL ACCEPTANCE

Project Name: Dishno Riparian Fence FWP #: 16-05
Location: near Wisdom, MT Date: _____

To: **MONTANA FISH WILDLIFE AND PARKS
DESIGN AND CONSTRUCTION
P.O. BOX 200701 • 1522 9TH AVENUE
HELENA, MT 59620-0701**

Architect/Engineer: _____

Contractor: _____ Contract Date: _____
_____ Contract Amount: _____

The Work performed under this Contract has been reviewed and found to be complete and has reached Final Acceptance. The Date of Final Acceptance of the Work is defined as the Date Certified by the Architect/Engineer upon which the Work is fully complete in all aspects, **and** which the Owner accepts the Contractor's work as complete. The Date of Final Acceptance of the Project, or portion thereof designated above, is also the basis for commencement of the DURATION of applicable warranties required by the Contract Documents. The Warranty Period is defined in the Contract Documents as commencing with Substantial Completion(s) and continuing for one (1) calendar year from the Date of Final Acceptance. This date shall correspond to the date of the Architect/Engineer's approval on the final pay application unless otherwise agreed upon in writing. In the event of a disparity between the date of the Architect/Engineer's approval and this form, if no other written agreement exists as to the date of final acceptance, this form shall constitute such agreement and it shall govern as the date of Final Acceptance.

Date of Substantial Completion:	Date of Final Acceptance:	Date of Warranty Expiration:

Notes:

Architect/Engineer By _____ Date _____

Contractor By _____ Date _____

Agency By _____ Date _____
**State of Montana Department of Fish, Wildlife and Parks,
Design and Construction**

Owner By _____ Date _____

1522 9th Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 841-4003 | Fax: (406) 841-4004

Sample

RE: Dishno Riparian Fence Project, FWP #16-05

To Whom It May Concern:

Enclosed are two (2) copies of the General Construction Contract between the Department. Please sign both copies of the Contract and return them to our office. **Please note that in order for our office to issue you a “Notice to Proceed,” we also require the following proof of insurance, as stated in the contract:**

- A. **Worker’s Compensation:** The Contractor shall maintain and provide proof of **Worker’s Compensation Insurance**, unless the contractor can provide proof of exemption from Worker’s Compensation, in which case the Contractor is only required to provide **proof of exemption from Worker’s Compensation**. The Contractor shall also provide a **current Certificate of Contractor Registration**.
- B. **Commercial Liability Coverage:** The Contractor shall maintain Commercial General Liability Insurance with \$1,000,000 aggregate limit.
- C. **Automobile Liability Insurance:** The Contractor shall maintain an Automobile Liability Insurance Policy in accordance with state law.
- D. **Proof of Insurance:** The contractor shall provide proof to the Department that the insurance coverages required by this paragraph are in place. These coverages must be sufficient to insure against the covered perils occurring during the term of this contract, regardless of when a claim is made.
- E. **ALL RISK INSURANCE (FOR NEW BUILDING CONSTRUCTION ONLY):** Contractor to provide all risk insurance for the cost of the completed structure.

All insurance certificates must include the project name and FWP number. Montana Fish, Wildlife, & Parks/Design & Construction also needs to be listed as additional insured on the Commercial Liability Certificate. Please make sure your insurance company gets the above information. See specification for complete insurance requirements.

Please feel free to contact me at 841-4001 if you have any questions. Thank you.

Sincerely,

Sue Rice
Contracts Manager
Montana Fish, Wildlife, & Parks
Design & Construction

Encl.

FEDERAL LABOR CLAUSES OF THE CONTRACT FOR CONSTRUCTION

(Revision Date: February 19, 2015)

1. ARTICLE 16 – FEDERAL CONTRACT REQUIREMENTS

1.1. Federal Prevailing Wage and Other Requirements - Davis-Bacon, Payrolls, and Basic Records:
NOT REQUIRED FOR THIS PROJECT

1.2. EQUAL OPPORTUNITY. If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with the subparagraphs below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause. During performing this contract, the Contractor agrees as follows:

1.2.1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

1.2.2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

1.2.3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain the clause.

1.2.4. The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

1.2.5. The Contractor shall send, to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause and post copies of the notice in conspicuous places available to employees and applicants for employment.

1.2.6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

1.2.7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 12 months preceding the date of award.

1.2.8. The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

1.2.9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

1.2.10. The Contractor shall include the terms and conditions of subparagraph b.(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

1.2.11. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

1.2.12. Executive Order 11246 as Amended by Executive Order 11375. Compliance with executive order 11246, entitled "Equal Employment Opportunity," as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60). During the performance of this contract the Contractor agrees as follows:

1.2.12.1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

1.2.12.2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

1.2.12.3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, the Notice regarding "Affirmative Action to Ensure Equal Employment Opportunity", advising the labor union or workers' representative of the Contractor's commitments under Section 202, of Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1.2.12.4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and of the rules, regulations, and relevant orders of the Secretary of Labor.

1.2.12.5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

1.2.13. The Secretary of Labor may direct that any bidder or prospective contractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

1.2.14. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and such remedies invoked as provided in Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) or by rules, regulations, or by order of the Secretary of Labor, or as otherwise provided by law.

1.2.15. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency. The contractor may request the United States to enter into such litigation to protect the interest of the United States.

1.2.16. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

1.3. Clean Air and Water.

1.3.1. "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

1.3.2. "Clean air standards," as used in this clause, means:

1.3.2.1. Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738; or,

1.3.2.2. An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d)); or,

1.3.2.3. An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or,

1.3.2.4. An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)). "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

1.3.3. "Compliance," as used in this clause, means:

1.3.3.1. compliance with Clean air or water standards; or

1.3.3.2. A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

1.3.4. A Facility, as used in this clause, means:

1.3.4.1. Any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility

except when the Administrator, or a designer, of the Environmental Protection Agency, determines that independent facilities are collected in one geographical area.

1.3.5. "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

1.3.6. The Contractor agrees:

1.3.6.1. To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract; and,

1.3.6.2. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing; and,

1.3.6.3. To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and,

1.3.6.4. To insert the substance of this clause into any nonexempt subcontract.

1.4. Non-Segregation. By the submission of this bid, the Contractor agrees to the following:

1.4.1. "By submission of my bid for this project, I certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any locations, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the equal opportunity clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise. I further agree that I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause, that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors."

1.5. Copeland Anti-Kickback Act (18 U.S.C. 874). This act provides that each contractor or sub-contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he is otherwise entitled. Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

1.6. Rights to Inventions Made Under a Contract or Agreement (37 CFR 401).

1.6.1. Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.

1.6.1.1. The contractor will disclose each subject invention to the appropriate Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical

characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

1.6.1.2. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the appropriate Federal agency within two years of disclosure to the appropriate Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

1.6.1.3. The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

1.6.1.4. Requests for extension of the time for disclosure, election, and filing under the above subparagraphs may, at the discretion of the agency, be granted.

1.6.2. Conditions When the Government May Obtain Title. The contractor will convey to the Federal agency, upon written request, title to any subject invention.

1.6.2.1. If the contractor fails to disclose or elect title to the subject invention within the times specified, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the contractor to disclose or elect within the specified times.

1.6.2.2. In those countries in which the contractor fails to file patent applications within the times specified; provided, however, that if the contractor has filed a patent application in a country after the times specified, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

1.6.2.3. In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

1.6.3. Minimum Rights to Contractor and Protection of the Contractor Right to File

1.6.3.1. The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.

1.6.3.2. The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding

Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

1.6.3.3. Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

1.6.4. Contractor Action to Protect the Government's Interest

1.6.4.1. The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested herein above and to enable the government to obtain patent protection throughout the world in that subject invention.

1.6.4.2. The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions herein above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required herein above. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

1.6.4.3. The contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

1.6.4.4. The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

1.6.5. Subcontracts

1.6.5.1. The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

1.6.5.2. The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required.

1.6.5.3. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under this clause.

1.6.6. Reporting on Utilization of Subject Inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with this clause. As required by 35 U.S.C. 202(c) (5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

1.6.7. Preference for United States Industry. Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

1.6.8. March-in Rights. The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

1.6.8.1. Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

1.6.8.2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

1.6.8.3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

1.6.8.4. Such action is necessary because the agreement required by this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

1.7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

1.7.1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification to the State and shall collect all certifications from all subcontractors as required by this paragraph.

1.7.2. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

1.7.3. Certification. The certification shall contain the following language and signature:

1.7.3.1. The undersigned certifies, to the best of his or her knowledge and belief, that:

1.7.3.1.1. (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

1.7.3.1.2. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and,

1.7.3.1.3. (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

1.7.3.2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure. The undersigned states, to the best of his or her knowledge and belief, that:

1.7.3.2.1. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

1.7.3.2.2. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure.

1.8. Debarment and Suspension (E.O.s 12549 and 12689).

1.8.1. In accordance with Public Law 103-355, Section 2455 ([31 U.S.C. 6101](#), note), and Executive Order 12689, any debarment, suspension or other Government-wide exclusion initiated under the Non-procurement Common Rule implementing Executive Order 12549 on or after August 25, 1995, shall be recognized by and effective as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Government-wide exclusion initiated on or after August 25, 1995, under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Non-procurement Common Rule.

1.8.2. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors. Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

1.8.2.1. Contractors included in the EPLS as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

1.8.2.2. Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.

1.8.2.3. After the opening of bids or receipt of proposals, the contracting officer shall review the EPLS.

1.8.2.3.1. Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected.

1.8.2.3.2. Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

1.8.2.3.3. Immediately prior to award, the contracting officer shall again review the EPLS to ensure that no award is made to a listed contractor.

1.8.3. Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

1.8.3.1. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor or Subcontractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

1.8.3.2. The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

1.8.3.3. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment. The notice must include the following:

1.8.3.3.1. The name of the subcontractor.

1.8.3.3.2. The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

1.8.3.3.3. The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

1.8.3.3.4. The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

[END OF GENERAL CONDITIONS]